FCC Notice of Proposed Rulemaking (NPRM)
CG Docket No. 02-278

Regarding proposed changes to the TCPA and TSR, here are our comments.

1 Abandonment of Outbound Calls

The Direct Marketing Association's survey of telemarketing companies showed that a three percent abandonment rate was acceptable for the industry without degrading the cost effectiveness of predictive dialer technology and without creating a nuisance to consumers. Legislating a zero percent call abandonment rate would drive the cost of telemarketing upward to the point where the millions of dollars invested by the industry in predictive dialing technology would be wasted, and the cost per telemarketing hour would increase fourfold. These would have severe telemarketing industry-wide impacts on the numerous small businesses and on consumers in the form of increased prices for products and services and in some cases the elimination of certain consumer choices. Legislation of a zero percent abandonment would be unfairly biased in favor of the consumer and prejudicial against the telemarketing companies because the new definition of a received call is illogical. A call cannot be considered as received until there is a two-way communication between the caller and the called party. There are other effective alternative ways to address call abandonment other than legislating a zero abandonment rate such as outbound messaging. Our company supports a call abandonment policy of three percent.

2 Caller ID

All commercial organizations should be prohibited from blocking display of their telephone number from caller ID boxes. No organization should be exempt from this requirement. This includes political, religious, charitable, and all other tax-exempt organizations. The ability to not block caller telephone number requires ISDN lines for the equipment. However, if a telemarketer does not make any attempt to block their telephone number, then they should not bear any liability if the telephone company equipment does not pass the number on to the called party.

3 Predictive Dialers Versus Auto-dialers

Predictive dialers should not be classified with "auto-dialers" because they are not the same. So-called auto-dialers randomly and indiscriminately generate and dial telephone numbers. Predictive dialers do not. The difference between the two is distinct and it is an important distinction particularly when considering legislation regulating their use. Predictive dialers call only pre-defined consumers who have been identified as high potential buyers of the products and services being offered by the caller. Only those individuals are called. The telephone numbers called by predictive dialers are specific and are not random in any way. A so-called calling list is loaded into the predictive dialer, and it contains only the telephone numbers of certain consumers to whom the seller wants to present their offering. Auto-dialers randomly dial telephone numbers

without regard whether the called party may even be eligible, qualified for or even interested in hearing about the offer. Auto-dialers take a random "pot-luck" approach and are annoying at best. Restrictions placed on the use of auto-dialers should not be automatically considered as applicable to predictive dialers.

4 Tax-exempt Non-profit Organizations

No organization should be exempt from any laws of the United States. No distinction should be made between any organization's obligation to comply with the laws regardless of whether it is a private, charitable, religious, or political organization. Telephone calls from these organizations can be just as intrusive as unwanted commercial telemarketing calls, and potentially even more objectionable because they are exempt from the provisions of the TCPA and the TSR both of which address appropriate telephone conduct. If a consumer places themselves on a state or national do not call list, that means they do not want to be called by anyone; and their request should be honored regardless of the organization's tax status. Many of the problem calls are from tax-exempt organizations. Commercial telemarketing companies are required to comply with all laws; and they train their telephone representatives thoroughly before they are permitted to make calls and interact with consumers. They are trained to honor all requests not to be called again. Exemption from the law is discriminatory and prejudicial against the commercial telemarketing industry; and it does not ensure the protection of the consumer.

5 Established Business Relationship

The notion of requiring a consumer to cancel their account with a company in order to prevent phone calls is ludicrous and could ruin a beneficial and successful relationship. The consumer would be forced to terminate a relationship in order to have a do not call request honored. The consumer may choose to retain their account relationship – even though inactive – with the marketer for future convenience and use. Such legislation would result in: a) companies losing good customers; b) increased costs to the company in acquiring new accounts to replace lost customers; and c) they would suffer negative public opinion. Conversely, if a consumer cancels their account in order to stop calls; would the reverse logic be that when they re-open their account, the company can resume making calls to them? There is no good rationale for requiring a consumer to terminate the business relationship in order not to receive telemarketing calls. It dose make sense for a consumer's wish to not receive calls be honored without termination of the business relationship.

6 Calls to Wireless Consumers

Our company's practice is to remove from calling lists all telephone numbers that are contained on state and national no call lists, including numbers identified as being cellular numbers in compliance with the TCPA. It is our practice to not target cell phone customers for telemarketing calls. The Direct Marketing Association and other organizations provide no call lists containing cellular numbers to which organizations can subscribe for the purpose of purging cell numbers from their calling lists.

7 State Law Pre-emption

The creation of a federal no call list would not ensure any better compliance with consumer wishes to not be called. The state lists are effective in accomplishing this objective. Introduction of yet another list would be duplicative and unnecessarily costly to the telemarketing industry and to consumers. However, since the TCPA does not pre-empt **"any law that imposes more restrictive intrastate requirements or regulations…"** the argument can be made that the state no call lists **can** be pre-empted by a federal list because their functionality is not greater than the proposed federal no call list functionality. The proliferation of state and federal no call lists will cost our company $203,000 per year to administer and comply with all state and federal no call laws. Multiplying this cost by the 1,727 small business telemarketing companies would result in over $350 Million in industry costs that would be passed on to consumers as price increases in the products and services they purchase. Pre-emption of state no call lists would offer simplicity and economies to consumers and the telemarketing industry in the form of a single no call list nationwide.